

Message Text

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PAGE 01 STATE 055582

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ORIGIN EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

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TO AMEMBASSY LIMA IMMEDIATE

INFO AMEMBASSY QUITO

AMEMBASSY BUENOS AIRES

AMEMBASSY LA PAZ

C O N F I D E N T I A L STATE 055582

E.O. 11652: GDS

TAGS: EAIR, PE

SUBJECT: US-PERU CIVAIR DISPUTE

REF; LIMA 1928

1. DEPARTMENT RECOGNIZES RISKS INVOLVED IN TAKING PART 213
ACTION AT THIS TIME. THERE ARE, HOWEVER, TWO FACTORS WHICH
PERSUADE US THAT SOME MOVE IN THIS DIRECTION SHOULD BE
INCLUDED IN SCENARIO. FIRST, IT APPEARS TO US THAT PERU IS
LOSING VERY LITTLE BY PERPETUATING CURRENT SITUATION IN
WHICH BRANIFF IS SEVERELY RESTRICTED AND LOSING MONEY WHILE
AEROPERU CONTINUES OPERATE UNRESTRICTED. AEROPERU SEEMS TO
HAVE CONVINCED ITSELF THAT SHOW CAUSE ORDER POSES NO IMME-
CONFIDENTIAL

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PAGE 02 STATE 055582

DIATE THREAT AND THAT CAB PROCEEDING CAN BE TIED UP FOR

MONTHS BY LEGAL MANEUVERING. (IN THIS CONNECTION, AEROPERU COUNSEL HAS JUST ASKED CAB FOR 30-DAY EXTENSION BEYOND MARCH 17 TO FILE ITS RESPONSE.) SECONDLY, BRANIFF INFORMS US THAT, UNLESS AN AGREEMENT CAN BE REACHED SOON, IT MAY HAVE TO MAKE MAJOR REDUCTIONS IN ITS PERU SCHEDULES IN ORDER TRY TO CUT ITS LOSSES. SUCH REDUCTIONS WOULD FAVOR AEROPERU AND WOULD LIKELY BE VIEWED BY PERU AS A VICTORY, MAKING IT ALL THE MORE DIFFICULT TO OBTAIN A SATISFACTORY AGREEMENT. IDEALLY, BRANIFF WANTS TO IMPLEMENT TERMS OF HOPED-FOR AGREEMENT BY JUNE 1. BECAUSE OF LEAD TIME REQUIRED TO

ARRANGE AND PUBLISH SCHEDULES, THIS MEANS AGREEMENT SHOULD BE REACHED BY END MARCH. WHILE WE DOUBT AGREEMENT COULD BE REACHED BY THIS TIME UNDER BEST OF CIRCUMSTANCES, WE ARE SYMPATHETIC WITH BRANIFF'S DILEMMA.

2. DEPARTMENT HAS CONSULTED CAB RE PART 213 TIMING. CAB RELUCTANT TO DEFER A PART 213 ORDER BEYOND PERHAPS EARLY NEXT WEEK. UNDER THESE CIRCUMSTANCES, DEPARTMENT BELIEVES EMBASSY SHOULD PROCEED PROMPTLY TO TAKE ACTION IN PARAS 4 AND 5 BELOW WHICH INVOLVES DELIVERY OF A US PAPER AND A WARNING THAT RESTRICTIONS ON AEROPERU FREQUENCIES MAY BE IMPOSED.

3. EMBASSY SHOULD BE AWARE THAT PRESIDENT HAS SEVERAL OPTIONS RE PART 213 ORDER. IF HE TAKES NO ACTION, ORDER

WOULD BE ISSUED AND MADE PUBLIC TEN DAYS AFTER SUBMISSION TO PRESIDENT AND FLIGHT REDUCTIONS REQUIRED 30 DAYS THEREAFTER. SECOND OPTION IS TO DISAPPROVE ORDER. THIRD OPTION IS TO STAY THE ORDER FOR EITHER AN INDEFINITE OR FIXED PERIOD, THAT IS, NEITHER APPROVING NOR DISAPPROVING BUT RESERVING HIS PREROGATIVE TO TAKE ACTION LATER. LATTER OPTION MAY HAVE SOME LEVERAGE ADVANTAGE, SINCE IT GIVES A CLEAR SIGNAL TO PERU OF WHAT LIKELY HAPPEN IF NEGOTIATIONS FAIL. IN ADDITION THESE OPTIONS, WE COULD PROBABLY PREVAIL ON CAB TO WITHDRAW ORDER RATHER THAN FACE PRESIDENTIAL DISAPPROVAL IF WE DECIDED AT THE TIME THAT NO PART 213 ACTION SHOULD BE TAKEN OR MADE PUBLIC.

CONFIDENTIAL

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PAGE 03 STATE 055582

4. TEXT OF PAPER PREPARED BY DEPARTMENT IN RESPONSE PAPER PRESENTED BY PERU EMBASSY BEING SENT SEPTTEL. DEPT RECOMMENDS PAPER BE DELIVERED TO GOP AT HIGHEST LEVEL POSSIBLE. IN DELIVERING PAPER, SUGGEST FOLLOWING ORAL POINTS BE MADE:

A. USG DESIRES REACH A NEGOTIATED SOLUTION.

B. US PAPER DEALS WITH THOSE ASPECTS OF PERU PAPER WITH WHICH US HAS DIFFICULTIES OR WITH RESPECT TO WHICH MEANING OF PERU PAPER IS UNCLEAR. WHILE IT CAN BE ASSUMED US HAS NO MAJOR DIFFICULTY WITH THOSE PARTS OF PERU PAPER WHICH ARE NOT ADDRESSED IN US PAPER, WE OF COURSE MUST RESERVE OUR VIEWS ON THESE PARTS UNTIL RESPONSE RECEIVED TO US PAPER.

C. IF RESPONSE TO US PAPER INDICATES PERU WILLINGNESS TO ATTEMPT ACCOMMODATE US CONCERNS, IT WILL THEN PROBABLY BE NECESSARY TO BEGIN DETAILED NEGOTIATIONS. FYI. WHILE

DEPARTMENT NOT OPPOSED TO FURTHER AIRLINE TALKS IN THIS CONNECTION, WE WONDER IF WE WOULD NOT BE BETTER OFF IF DETAILED NEGOTIATIONS WERE WITH FONOFF. END FYI.

5. IN ADDITION TO FOREGOING, AMBASSADOR SHOULD ADVISE SENIOR GOP LEVELS THAT USG CANNOT ALLOW CURRENT UNSATISFACTORY SITUATION (IN WHICH BRANIFF LOSING MONEY BECAUSE OF RESTRICTIONS, WHILE AEROPERU CONTINUES OPERATE WITHOUT RESTRICTIONS) TO CONTINUE INDEFINITELY. ADMINISTRATIVE STEPS ARE UNDER WAY WHICH LIKELY RESULT IN RESTRICTIONS ON AEROPERU FREQUENCIES UNLESS PROMPT PROGRESS MADE IN NEGOTIATING A SOLUTION. THESE RESTRICTIONS WOULD BE QUITE SEPARATE FROM FUNDAMENTAL QUESTION WHETHER AEROPERU'S PERMIT SHOULD REMAIN IN EFFECT. THEREFORE, US LOOKS FOR A PERU RESPONSE TO THE US PAPER WITHIN ONE WEEK. INGERSOLL

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